represent the citizens of the state, and that the latter are bound on collateral attack by a judgment rendered in a suit by a railroad against the commissioners in regard to fixing of rates; that, however, if the rate fixed is unjust the citizen may proceed directly to petition the board to alter it, and upon their refusal may sue in equity to enjoin both the carrier and the public officers from enforcing such rate. *Central of Georgia Ry. Co. et al.* v. *Railroad Commission of Alabama et al.* (1908), — C. C., M. D., Ala. —, 161 Fed. 925, 981.

This case illustrates a departure from the general rule that a judgment binds only parties and their privies. We have been unable to find any cases directly in point, but the cases where action is brought by or against public officers in their official capacity are closely analogous, inasmuch as the principal case holds that the suit against the officers binds the public by representation, and therefore the effect is practically the same as if such officers were sued in their official capacity. There are several cases which hold that in an action by a taxpayer against the taxing officers to enjoin the collection of a tax or to have it declared void, a former judgment against such officers holding the purpose for which the tax is levied to be valid is conclusive upon the rights of the individual taxpayer, though not a formal party to such proceeding. *Clark* v. *Wolf et al.*, 29 Ia. 197; *Harmon* v. *Auditor of Public Accounts*, 123 Ill. 122, 13 N. E. 161, 5 Am. St. Rep. 502, affirming *Harmon* v. *Auditor of Public Accounts*, 22 Ill. App. 129. See also *Cannon* v. *Nelson*, 83 Ia. 242, 48 N. W. 1033. On the other hand, it has been held that the judgment in a suit brought by the county commissioners is not binding on a taxpayer in a subsequent suit, though the issues of the two cases are identical, the court saying that the taxpayer was not a party or privy and therefore is not concluded. *Price* v. *Gwin*, 144 Ind. 105, 43 N. E. 5. See also *Denny* v. *State*, 144 Ind. 503, 42 N. E. 929, 31 L. R. A. 726. In the principal case it is certain that the citizens are not parties in the sense that they have the right to call and examine witnesses and control the trial. Furthermore, if the citizens are to be bound at all by a judgment in a case in which they are parties by representation only, then why should they not be concluded as to all questions? Why should not the decision of the representatives be final as to whether or not there should be an appeal from the judgment? And on what principle can the filing and denial of a petition to revise railroad rates give a person a right to bring suit when otherwise he would be concluded by a former judgment?

MANDAMUS—WHEN PROPER—LICENSES—DISCRETION OF OFFICERS—ARBITRARY EXERCISE.—The Statute of South Carolina provides that a board of examiners "shall alone possess and exercise the power of granting, withholding or vacating the license of pharmacists, apothecaries and druggists," and further that "No examination shall be required in case the applicant is a regular graduate in pharmacy from any reputable college." The relator was a graduate of the Department of Pharmacy, University of Maryland, and waived the benefit of exception as to college graduates and offered to take the examination to become a registered pharmacist. He was excluded

from examination on the ground that he had served "less than four years with a druggist or apothecary." Thereupon the relator presented his diploma, and demanded a license as a graduate of "a reputable college." His demand was refused and the relator applied to the court for a writ of mandamus requiring the board to issue him a license. *Held*, the board had no discretion to refuse to issue the license to the petitioner, and accordingly a writ should issue. *State ex rel Mauldin* v. *Matthews et al* (1908) — S. C. —, 62 S. E. 695.

The decision of the court in the principal case is in conformity with what may be called the modern doctrine, namely, that the courts can control by mandamus the actions of officers or official boards vested with discretionary power when in the judgment of the court their conclusions are against facts and therefore capricious and arbitrary. *People ex rel. E. C. T. Club* v. *State R. Com.*, 190 N. Y. 31, 82 N. E. 723; *Dental Examiners* v. *The People ex rel. Cooper*, 123 Ill. 227; *Wood* v. *Strother*, 76 Cal. 545, 18 Pac. 766, 9 Am. St. 249; *St. Louis* v. *Meyrose Mfg. Co.*, 139 Mo. 560, 41 S. W. 244. The weight of authority is still, however, that mandamus will not lie where there has been a discretionary power granted, since virtually it is a substitution of the discretion of the court for that of the officers. TAPPING, MANDAMUS, p. 66; HIGH, EX. LEG. REM., Ed 3, § 44 b; 2 SPELLING, INJ. AND EXT. REM., § 1476; AM. & ENG. ENCYC. OF LAW, Ed. 2, Vol. 19, p. 821, and cases cited. The principal case is sustained under practically identical facts by *Dental Examiners* v. *The People ex rel. Cooper*, supra, and by *State Board of Pharmacy* v. *White*, 84 Ky. 626, where the court in granting the writ, still loath to admit that the court was controlling a discretionary power, said: "If judgment is to be exercised, or the act be of a judicial character, depending upon the discretion of the power that may perform it, then a court will not interfere by means of this writ." See also *State* v. *Lutz*, 136 Mo. 633, overruling *State* v. *Gregory*, 83 Mo. 123. The principal case emphasizes the growing tendency of the courts to supervise the discretion of administrative officers, and, while still of doubtful authority, it is perfectly in line with this modern movement. 6 MICH. L. REV. 512.

MASTER AND SERVANT—INJURIES TO THIRD PERSONS—CHARITABLE CORPORATIONS.—The plaintiff was run over in the street by an ambulance of the defendant, a charitable corporation, through the negligence of the driver. *Held*, that the rule *respondeat superior* applies. *Kellogg* v. *The Church Charity Foundation* (1908), 112 N. Y. Supp. 566.

It is frequently stated that "the principle is well settled that a private charitable institution which has exercised due care in the selection of its employes cannot be held liable for injuries resulting from their negligence." 4 AM. & ENG. ANN. CAS. 104, and cases there cited. That this statement of the rule is too broad is evident from a consideration of the facts in the principal case, which, manifestly, it does not cover, and apparently it is deduced from decisions bearing on the right of one who has accepted the benefits of a charitable institution to sue for injuries sustained while in such relation to the defendant. 9 CENT. DIG., CHARITIES, p.